IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9171 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAGDISHCHANDRA MOHANLAL BHATT - Petitioner(s)

Versus

BANCO PRODUCTS (I) LTD. - Respondent(s)

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Appearance :

MR NILESH M SHAH for Petitioner No(s).: 1.

MR VK PATEL for MR KM PATEL for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 13/07/2005

ORAL JUDGMENT

1. This petition is directed against the judgment and award dated 26th March, 1998 passed by the Labour Court, Vadodara in Reference [L.C.V.] No. 12/85, whereby the Labour Court has not granted full back wages to the petitioner workman.

2. The short facts of the case are that the petitioner was working with the respondent Company on permanent basis. It is the case of the petitioner workman that without following any procedure under the Industrial Disputes Act, 1947, the respondent Company dismissed the petitioner workman from the service w.e.f. 1st July, 1984.

2.1. Feeling aggrieved by the said order, the petitioner workman raised an industrial dispute which was ultimately referred to the Labour Court, Vadodara for adjudication. The Labour Court after appreciating the materials produced before it, denied full back wages to the petitioner workman. Hence, this petition.

3. Mr. Shah learned advocate for the petitioner workman has contended that the Labour Court has committed an error in granting full back wages. He has submitted that the petitioner workman was not gainfully employed and further no evidence has been led by the respondent Company that the petitioner workman was gainfully employed elsewhere. He has further submitted that the Labour Court has on the principle of “No Work No Pay”, awarded only 35% back wages instead of full back wages.

3.1. In support of his contention, he has placed reliance on the decision of this Court in the case of **Veterinary Officer & Anr., v. Rajendrasinh R. Jhala reported in 1998 G.L.R. p.110,** more particularly para 5, which reads as under :-

"5. Coming to the petition of the petitioner-workman so far as the claim to the back wages from the date of termination i.e. 15-6-1990 to the date of reinstatement, it is to be seen that no evidence has been led by the employer that the workman was gainfully employed anywhere. The workman in his statement has denied that during the period he was gainfully employed anywhere. Thus, it is a case in which there is no evidence on record about the gainful employment of the workman during the intervening period. The fact that the workman in his statement has stated that he has not made any effort to see an alternative employment does not lead to any inference that because he was gainfully employed elsewhere, he must not have sought alternative employment. On the contrary, it is well established that even if an employee who has been illegally retrenched has to do certain work and earn his livelihood to save himself from starvation does not dis-entitle him to the claim of back wages which is a normal consequence of reinstatement as a result of illegal retrenchment which cannot be denied. Therefore, denial of back wages to the workman when retrenchment was held to be invalid was not justified in the instant case on the basis of the material on record. Law is well settled that grant of back wages is a rule, denial is exception. For invoking exception, conditions for such exception must be shown to exist, by person who relies on exception, which in the case of denying back wages ordinarily means some material to suggest that the worker was gainfully employed during that period which was something more than mere necessity to preserve oneself. There being no such evidence, award to the extent of back wages suffers from

> apparent error on the fact of record. To that extent the award calls for interference."

4. I have heard the learned counsel for the parties. On perusing the materials placed on record, it transpires that the Labour Court has mainly relied upon the principle of "No Work No Pay", while denying full back wages to the petitioner workman.

4.1. Moreover, looking to the principle laid down by the Apex Court in the case of **Ram Ashrey Singh v. Ram Bux Singh, reported in (2003) II LLJ, 176**, wherein it has been held that a workman has no automatic entitlement to back wages since it is the discretionary and has to be dealt with in accordance with the facts and circumstances of each case. Hence, I am of the opinion that the Labour Court was justified in denying back wages to the petitioner workman. Thus, I am in complete agreement with the reasonings adopted and findings arrived at by the Labour Court for denying full back wages.

5. In the result, the petition is dismissed. Rule is discharged with no order as to costs. Interim relief if any, stands vacated.

[K.S. JHAVERI, J.]

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